vss

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.1418 OF 2005
IN
SUIT NO.3802 OF 2001

John Joseph Anthony Alphonso ... Plaintiff

V/s.

Nitin K. Gandhi & Anr. ... Defendants

Mr.Bipin Joshi for Plaintiff
Mr.H.J. Thakkar i/b M.K. Nesari for Defendants

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **DECEMBER 12, 2005**

P.C.:

. This Chamber Summons has been taken out for the following reliefs:

(a) This Honourable court be pleased to direct the Defendants Nos.1 and 2 to execute the agreement in respect of flat Nos.103, 601 and 702 as well as in respect of parking spaces in favour of the Plaintiff or his nominees or me, and to get the same registered after payment of the requisite Stamp Duty and Registration Charges.

(b) In the alternative, to prayer (a), this Honourable Court be pleased to direct the Court Receiver to execute the agreement in respect of the flats referred in prayer (a) above and recover the costs of stamp duty and registration charges from the Defendants Nos.1 and 2,

(c) Put up the board of Court receiver at the property and post security guards at the cost

of the Defendants Nos.1 and 2, with instructions to prevent further demolition of the A building,

(d) The Defendants Nos.1 and 2 be restrained by an Order and Injunction of this Honourable Court from carrying on any demolition, construction or further development at the suit property bearing Plot Nos.1376/1 to 6, Marion Mansion, Plot NO.240, M.D.S. Marg, Chembur, Mumbai-400 071, being Phase III of the development.

2. Consent terms were entered into between the Plaintiff and the defendants which resulted in a consent decree being passed by this Court on 6.11.2001. Under these consent terms, certain conditions were to be fulfilled by the defendants. The plaintiff similarly was to comply with other requisites under the consent terms. The defendants were expected to execute an agreement in respect of flat Nos.103, 601 and 702 and parking spaces in favour of the plaintiff. The consent terms in fact mention that the agreements have already been executed and the registration of these documents on payment of requisite stamp duty and registration charges was to be effected by the defendants. According to the plaintiff, the payments were to be made in instalments to the plaintiff in respect of the property owned by the plaintiff and which was delivered under the consent terms to the defendants.

3. After the consent decree was signed, a Notice of

Motion was taken out by the plaintiff being Notice of Motion No.3286 of 2005, wherein the plaintiff had sought the same reliefs as are sought in this Chamber Summons. It appears that on 28.10.2005, liberty was granted to the plaintiff to withdraw the Motion and to move a Chamber Summons. The present Chamber Summons has been filed after withdrawl of the Motion.

4. According to the plaintiff, the defendants committed a breach of certain undertakings given to this Court when the consent decree was passed on 6.11.2001. A Contempt Petition was therefore moved by the plaintiff being Contempt Petition No.70 of 2003. This Contempt Petition was dismissed by an order of this Court dated 15.9.2003. However, this Court observed that the dismissal of the Contempt Petition will not preclude the plaintiff from putting the decree in execution. The Special Leave Petition preferred before the Apex Court against this order is pending.

5. The learned Counsel for the defendant, Mr.Thakkar, submits that the Chamber Summons is not maintainable as the plaintiff is in effect seeking the execution of the consent decree dated 6.11.2001. He submits that under the Original Side Rules of the High Court, a decree can be executed only by filing an

application in Form No.45 under the Original Side Rules. He submits that the Chamber Summons alone cannot substitute the requirements of filing Form No.45 for execution of the decree. All the prayers sought in the Chamber Summons are for complying with the consent decree and therefore, it amounts to execution of the decree.

6. This submission of the learned Counsel for the Respondent must be accepted. The consent decree of 6.11.2001, as detailed in the affidavit in support of the Chamber Summons, provided for certain conditions and terms to be carried out by the defendants including:

> 3. .....(a) converting flat No.103 into office premises, (b) allotting flat No.601 admeasuring 944 square feet (carpet area) to the Plaintiff or his nominee within 6 months from the date of execution hereof. (c) allotting flat No.702, admeasuring 645.25 square feet (carpet area) to the Plaintiff or his nominee within 6 months from the date of execution hereof. (d) payment of instalment of Rs.6,00,000/- on casting the 7th floor slab of B Building within 2 months from the date of obtaining permission from the Competent Authority whichever is earlier. (e) payment of instalment of Rs.3,00,000/- on casting of 8th floor slab of B Building within 3 months from the date obtaining permission from the Competent Authority whichever is earlier. (f) payment of Rs.4,00,000/- on casting of 1st floor slab of A or C Building within 13 months from the date of obtaining permission from the Competent Authority whichever is earlier, (g) payment of Rs.4,00,000/- on casting of 1st floor slab of A or C Building within 13 months from the date of obtaining permission from the Competent Authority whichever is earlier, (h)

payment of Rs.4,00,000/- on casting of 2nd floor slab of A or C Building within 14 months from the date of obtaining permission from the Competent Authority whichever is earlier, (i)payment of Rs.4,00,000/- on casting of 3rd floor slab of A or C Building within 15 months from the date of obtaining permission from the Competent Authority whichever is earlier, (j) payment of Rs.4,00,000/- on casting of 16th floor slab of A or C Building within 16 months from the date of obtaining permission from the Competent Authority whichever is earlier, (k) that the Defendants are required to execute agreements fro sale in respect of the aforesaid flats and parking spaces and stilt and also to pay stamp duty and registration charges."

7. The prayers in the Chamber Summons require the defendants to comply with the aforesaid requisitions. This would, therefore, amount to putting the decree up for execution. The Original Side Rules of the High Court require the decree to be put in execution in Form No.45 and, therefore, mere filing of the Chamber Summons will not suffice.

8. The order passed on 28.10.2005 by Kamdar, J. permitting the plaintiff to withdraw the Motion and granting him liberty to move a Chamber Summons does not in any manner reflect on the merits of the present Chamber Summons. This order does not permit the plaintiff to avoid the procedure required for putting the decree in execution.

9. Chamber Summons is, therefore, dismissed.

10. At the request of the learned Advocate for the Plaintiff, the order of status quo granted earlier to continue for a period of two weeks.